

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

|                                      |   |                          |
|--------------------------------------|---|--------------------------|
| <b>RICK and VANNA LY, BOBBAY</b>     | § | <b>PLAINTIFFS</b>        |
| <b>INVESTMENT COMPANY, LLC d/b/a</b> | § |                          |
| <b>BILOXI HOWARD JOHNSON and</b>     | § |                          |
| <b>BILOXI BEST, LLC d/b/a BILOXI</b> | § |                          |
| <b>HOLIDAY INN</b>                   | § |                          |
|                                      | § |                          |
| <b>v.</b>                            | § | <b>1:06CV1133-LG-JMR</b> |
|                                      | § |                          |
| <b>IDC CONSTRUCTION, LLC</b>         | § | <b>DEFENDANT</b>         |

**MEMORANDUM OPINION AND ORDER**  
**DENYING PLAINTIFFS' MOTION TO REMAND**

BEFORE THE COURT is the Motion of the Plaintiffs to Remand this cause pursuant to 28 U.S.C. § 1447(c). This civil action was originally filed in the Chancery Court of Harrison County, Mississippi. The complaint alleges that Plaintiffs were fraudulently induced to enter into certain demolition contracts with the Defendant. Plaintiffs seek damages for “extreme emotional distress.” Additionally, Plaintiffs seek rescission of the contracts and, alternatively request that the contract arbitration provisions be declared unenforceable. The case was removed by the Defendant alleging diversity jurisdiction under 28 U.S.C. § 1332. The parties agree that this case involves a controversy between citizens of different states. However, they do not agree that the matter in controversy exceeds the sum of \$75,000.

**FACTS**

On August 29, 2005, Hurricane Katrina decimated the Mississippi Gulf Coast. The Plaintiffs' home, the Howard Johnson hotel and the Holiday Inn sustained severe wind and water damage during the storm. According to the complaint, the Plaintiffs entered into three

separate demolition and debris removal contracts with the Defendant, IDC Construction, LLC. Copies of each of the contracts were attached to the complaint. Within each of these contracts is an arbitration provision. On October 17, 2005, IDC submitted three separate invoices for work performed pursuant to the contracts. Copies of the invoices were also attached to the complaint. When Plaintiffs did not pay the invoices Defendant filed construction liens under MISS. CODE ANN. § 85-7-133.

On October 17, 2006, Plaintiffs filed a complaint in the Chancery Court of Harrison County, Mississippi. They seek rescission of the three contracts. Alternatively, they request that the Court declare that the arbitration provisions contained in each of the contracts is unenforceable. Finally, the complaint seeks damages for intentional infliction of emotional distress. The *ad damnum* does not specify the sum of damages the Plaintiffs seek. Instead, Plaintiffs request “specific relief and... such other general relief they may be entitled to under law and equity.” *See* Complaint, at 7.

#### DISCUSSION

When a complaint fails to specify an amount of damages, the removing party must prove by a preponderance of the evidence that the amount in controversy exceeds the requisite jurisdictional amount. *De Aguilar v. Boeing Co.*, 11 F.3d 55, 58 (5<sup>th</sup> Cir. 1993). The removing parties burden may be fulfilled in one of two ways. First, if it is “facially apparent” from the plaintiffs’ complaint that their claims are likely to exceed the jurisdictional amount. Second, if the value of the plaintiffs’ claims is not apparent, then the removing party may support federal jurisdiction by setting forth facts, either in the petition for removal or by affidavit, that support a finding of jurisdictional amount. *Garcia v. Koch Oil Co. Of Texas*, 351 F.3d 636, 638-39 (5<sup>th</sup>

Cir. 2003). In the opinion of the Court, it is facially apparent from the allegations in the complaint that the amount in controversy exceeds \$75,000.

Plaintiffs seek to rescind three demolition and debris removal contracts. According to the documents attached to Plaintiffs' complaint, the amount allegedly owed on these contracts exceeds \$800,000. *See* Complaint, Exhibits A-F. Plaintiffs contend that since they do not seek money damages, but only a judgment declaring the contracts void, the Defendant is unable to prove that the Plaintiffs' claims exceed \$75,000.<sup>1</sup> Plaintiffs' argument is not persuasive. The amount in controversy is based upon the pecuniary consequences to those involved in the litigation. *Duberwicz v. Sweetwater Sav. Ass'n.*, 595 F.2d 1008, 1014 (5<sup>th</sup> Cir. 1979); *Roberts v. Chandaleur Homes Inc.*, 237 F.Supp.2d 696, 698-99 (S.D. Miss. 2002)("In their complaint, plaintiffs seek to rescind a contract which barring rescission, would require them to pay in excess of \$120,000 to defendants. If the rescission sought by plaintiffs is granted, then the 'pecuniary consequence to those involved in the litigation' of such rescission would be well in excess of \$75,000"); *see also Rosen v. Chrysler Corp.*, 205 F.3d 918 (6<sup>th</sup> Cir. 2000)("where a plaintiff seeks to rescind a contract, the contract's entire value, without offset, is the amount in controversy"). If the Plaintiffs succeed in rescinding the demolition and debris removal

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<sup>1</sup>The Plaintiffs' argument is summarized in the Motion to Remand as follows: Plaintiffs' claims herein are not a suit to bring Judgment against Defendant for sums that may be owed to the Defendant but are strictly sums the Defendant claims the Plaintiffs owe and the Plaintiffs claim that the underlying contracts, which gives rise to any alleged cause of action by the Defendant, are void *ab initio* as set out in the suit to declare the contract null and void as alleged. Clearly the Defendant herein has failed to prove by a preponderance of the evidence that any of the Plaintiffs' claims exceed the jurisdictional sum of \$75,000.00 as required by Federal Statute. *See* Motion to Remand, at 4.

contracts, they will avoid a “pecuniary consequence” far in excess of \$75,000. Moreover, Plaintiffs alternatively seek to declare the arbitration provisions of these contracts unenforceable. In other words, Plaintiffs seek to avoid future arbitration proceedings in which the amount at stake will exceed \$75,000. *See Webb v. Investacorp, Inc.* 89 F.3d 252 (5<sup>th</sup> Cir. 1996)(holding that the district court properly looked to the amount of Investacorp’s claim in the underlying arbitration to determine the amount in controversy in an action for declaratory relief). In the opinion of the Court, the requisite jurisdictional amount is apparent from the face of the complaint and the attached exhibits.

**IT IS THEREFORE ORDERED AND ADJUDGED**, that Plaintiffs’ Motion to Remand [7] the above styled and numbered cause, filed November 30, 2006, should be, and is, hereby **DENIED**.

**IT IS FURTHER ORDERED AND ADJUDGED** that, pursuant to Rule 16.1 (B)(2)(b) of the RULES OF THE UNITED STATES DISTRICT COURTS FOR THE NORTHERN DISTRICT OF MISSISSIPPI AND THE SOUTHERN DISTRICT OF MISSISSIPPI, the parties shall promptly notify the magistrate judge of this order and shall promptly submit an order lifting the stay entered in this matter on December 15, 2006.

**SO ORDERED AND ADJUDGED** this the 12<sup>th</sup> day of January, 2007.

s/ *Louis Guirola, Jr.*  
LOUIS GUIROLA, JR.  
UNITED STATES DISTRICT JUDGE